



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. NO. 660

IN THE MATTER
OF
ROBERT HANNA

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Robert Hanna pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 31, 2002, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Hanna. The Commission has concluded its inquiry and, on May 30, 2002, found reasonable cause to believe that Hanna violated G.L. c. 268A, §23(b)(2).

The Commission and Hanna now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. Hanna is the Highway Surveyor in the town of Brimfield.
2. In spring 2001, the town 2002 winter sand contract was put out to bid. All bids were to be submitted to the Board of Selectmen's office at town hall by 10 a.m. on May 30, 2001. (The sand contract is bid on by price per cubic yard of sand. The ultimate value of the contract depends on the severity of the winter and the demand for sand. The preceding four winter contracts were worth an average of \$17,000 per year.)
3. On May 30, 2001, after the 10 a.m. deadline had passed, the bids were opened. Hanna and the town procurement officer were present for the bid opening. The town received one bid for the winter sand contract, from Lorusso Corporation, in the amount of \$9.95 per cubic yard. Hanna believed that Lorusso Corporation's bid was high. The successful bidder for the town 2001 winter sand contract, Hitchcock Contracting, did not submit a bid.
4. Hanna left the selectmen's office after the bid opening was completed and drove to the offices of Hitchcock Contracting in Charlton. Hanna is familiar with the owner of Hitchcock Contracting as Hitchcock Contracting was awarded the winter sand contract for the town for the years 1999, 2000 and 2001. At Hitchcock Contracting's

offices, Hanna obtained a bid in an envelope for the 2002 winter sand contract and returned to town hall.

5. Hanna approached the procurement officer and told her he had spoken with a Hitchcock Contracting employee who had told him that she had taped the bid to the door of the police station. The police station is located in the basement of town hall and has its own entrance. With Hitchcock Contracting's envelope bid in hand, Hanna said to the procurement officer, "I found this taped to the door of the police station. What should we do about it?" The procurement officer indicated that the town could not accept Hitchcock Contracting's bid because the bid opening had been completed. Hanna did not object. He stated that the Lorusso Corporation bid was too high. Hanna left the procurement officer's office with the unopened Hitchcock Contracting's bid in hand.

6. Ultimately, the town put the 2002 winter sand contract out to bid again because it deemed the original bid by the lone bidder, Lorusso Corporation, to be high in comparison to bids from recent years. A third company was the low bidder in the re-bidding and was awarded the winter sand contract.

7. Hanna admits that his statement to the procurement officer that Hitchcock's bid was taped to the police station door was false. Hanna, however, asserts he went to Hitchcock Contracting to ask why it had not submitted a bid, as Hitchcock had submitted a bid for the five previous years. Hanna believed Lorusso Corporation's bid was too high and, thus, not in the town's best interests. Notwithstanding Hanna's assertions, his attempted efforts to circumvent the bidding process and his misrepresentation to the procurement officer were not justified. The appropriate action would have been to publicly request that the contract be re-bid.

-Statement of Law-

8. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know using or attempting to use his position to obtain for himself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

9. By attending the bid opening on town time and in his highway surveyor capacity, using knowledge of other contractors' bids, contacting Hitchcock Contracting, traveling to its place of business, obtaining a bid, misrepresenting how the bid was received, and then attempting to submit the bid on Hitchcock Contracting's behalf, Hanna used or attempted to use his highway surveyor position.

10. The attempted late submission of Hitchcock Contracting's bid was an unwarranted privilege as it was offered after the deadline and/or it was an unwarranted exemption as it deviated from and was an attempt to circumvent the proper bidding procedure.

11. Where the sand contract is potentially worth tens of thousands of dollars (depending on winter weather conditions), the ability to forego the proper bidding procedures is of substantial value.

12. The potential ability of Hitchcock Contracting to submit a bid for the sand contract after the stated deadline was not properly available to any other companies.

13. Thus, by using his official position as the highway surveyor in attempting to secure for Hitchcock Contracting an unwarranted privilege (having its bid for the sand contract considered after the deadline) and/or exemption (circumventing the proper bidding procedure), Hanna violated G.L. c. 268A, ' 23(b)(2).

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Hanna, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Hanna:

(1) that Hanna pay to the Commission the sum of \$2,000 as a civil penalty for his conduct in violating G.L. c. 268A, §23(b)(2);

(2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: June 19, 2002